IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.01.2006

CORAM:

THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

CIVIL REVISION PETITION(NPD) NO.2598 OF 2004
AND
C.M.P.NO.19834 OF 2004

1. N.Ramanathan
2. N.Nagarajan .. Petitioners/Respondents

Vs.

G.Varalakshmi .. Respondent/Petitioner

Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, (Amended Act, 1973) as stated therein.

For Petitioners .. Mr.N.Venkateswaran
For Respondent .. Mr.A.Jayabalan.

O R D E R

This Civil Revision arises against the order dated 29.10.2004 passed in R.C.A.No.1174 of 2004 by the VIII Judge, Court of Small Causes at Madras, confirming the order dated 14.9.2004 passed in M.P.No.484 of 2004 in R.C.O.P.No.139 of 2004 by the XIV Judge, Court of Small Causes at Madras in receiving the reply statement of the Respondent/Landlady to which prior permission was granted on 4.8.2004 in M.P.No.784 of 2004.

2. Based upon the tenancy agreement dated 1.1.1999, the landlady filed R.C.O.P.No.139 of 2004 on the ground of wilful default, owner's occupation and sub-letting made by the tenants. Denying the contentions made in the petition, the petitioners/tenants filed counter in the month of July, 2004, sating certain particulars in connection with the grounds upon which the eviction was sought for.

3. Finding that the contentions made in the counter are factually erroneous, the landlady wanted to file a reply statement and so filed an application in M.P.No.784 of 2004 seeking permission to file reply statement and after considering the objections of the tenants filed thereto, the trial Court granted permission. Subsequently, it is in accordance with the earlier permission granted, reply statement of the respondent/landlady was received. That statement was found to contain para-wise repudiation of what are all stated in the counter of the tenants.

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4. Both the Courts below after careful examination of the same found that there was no contention made in the reply statement of the landlady inconsistent with that of her statement found in the affidavit of R.C.O.P. It is pertinent to mention that both the Courts have factually gone into the same and had given a clear cut finding in that regard. Even the order permitting the landlady to file reply statement was passed only upon hearing both sides and upon perusing the contentions made in the application filed by the landlady seeking permission and the counter filed thereto by the tenants. The undisputed falsity in the reply statement and subsequent filling up of the lacuna in the counter filed by the tenants in the application of the landlady, seeking permission for filing reply statement, were suitably dealt with and favourable finding was given to receive reply statement. Even while receiving the reply statement, not only both the counsel were heard, but also both the Courts below found that there was no plea inconsistent with that of the original plea made by the landlady. In a similar situation the following guidelines were framed by the Rajasthan High Court in a case reported in State of Rajasthan and another vs. Mohammed Ikbal and others AIR 1999 Rajasthan 169:

> " a) The plaintiff cannot be allowed to introduce new pleas by way of filing rejoinder, so as to alter the basis of his plaint.
>
> b) In rejoinder, the plaintiff can be permitted to explain the additional facts which have been incorporated in the written statement. (c) The plaintiff cannot be allowed to come forward with an entirely new case in this rejoinder."

5. Coming to the case on hand, after having found by both the Courts below that the plea sought to be introduced by way of rejoinder is not inconsistent or at variance with the pleas originally taken in the plaint, I find no merit in this Civil Revision. This Civil Revision fails and is dismissed accordingly. The order dated 29.10.2004 passed in R.C.A.No.1174 of 2004 by the VIII Judge, Court of Small Causes at Madras, confirming the order dated 14.9.2004 passed in M.P.No.484 of 2004 in R.C.O.P.No.139 of 2004 by the XIV Judge, Court of Small Causes at Madras in receiving the reply statement of the Respondent/Landlady to which prior permission was granted on 4.8.2004 in M.P.No.784 of 2004 are confirmed. No costs. Consequently, C.M.P.No.19834 of 2004 is also dismissed.

gr.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The VIII Judge, Court of Small Causes, Chennai.
2. The XIV Judge, Court of Small Causes, Chennai.
3. The Registrar, Court of Small Causes,
   Chennai.

+1 CC to Mr.N.Venkateswaran, Advocate, SR No.1173

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